No. 92-1718

Supreme Court, U.S.
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In The Supreme Court of the United States

OCTOBER TERM, 1992

HAMILTON TAFT & COMPANY,
Petitioner,

v.

FEDERAL EXPRESS CORPORATION,
STANFORD UNIVERSITY HOSPITAL, THE BOARD OF TRUSTEES OF LELAND STANFORD JUNIOR UNIVERSITY, AND FREDERICK S. WYLE AS TRUSTEE FOR HAMILTON TAFT & COMPANY,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

REPLY BRIEF OF PETITIONER

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June 4, 1993

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Petitioner Hamilton Taft & Company files this reply in support of its petition for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit.

A. Respondents Never Address the Appropriateness of the Equitable Mootness Doctrine in the Context of *Involuntary* Bankruptcy Proceedings

Respondents' opposition to Hamilton Taft's petition is noteworthy primarily for what it omits — an analysis of the propriety of the equitable mootness doctrine in the context of *involuntary* bankruptcy proceedings. Respondents do not cite a single case in their opposition involving an involuntary proceeding, nor do they ever cite 11 U.S.C. section 303 itself. In fact, Respondents never address head on the central issue in this petition: whether appeal from a bankruptcy court order for relief can be moot when, if the order were reversed, the debtor could seek damages under 11 U.S.C. section 303(i).

In every case cited by Respondents addressing mootness, the debtor had *voluntarily* submitted to the jurisdiction of the bankruptcy courts — a process commonly referred to as "seeking the protection" of the bankruptcy courts. *See* 11 U.S.C. § 301. But Hamilton Taft did not "seek the protection" of the bankruptcy courts; Hamilton Taft was dragged to and through the bankruptcy courts against its will.

A debtor who willingly submits to bankruptcy court jurisdiction obviously will never have a right to recover monetary damages from anyone on the ground that the bankruptcy petition was improperly filed. Moreover, to the extent that such a debtor is unwilling or unable to seek a stay of proceedings, at least the debtor put *itself* into a forum where an equitable mootness doctrine might be used to foreclose appellate review.

Hamilton Taft, on the other hand, as an involuntary debtor, *does* have a right to recover monetary damages if it can establish that it was improperly placed into bankruptcy. This right is expressly granted by statute. 11 U.S.C. § 303(i); *In re Salmon*, 128 B.R. 313, 315 (M.D. Fla. 1991) ("Congress clearly created a remedy for malicious prosecution in the form of a bad faith filing of an involuntary petition in bankruptcy."). The opinions cited by Respondents, to the extent that they in fact applied an equitable mootness doctrine, did not do so in a manner that cut off a debtor's statutory right to recover monetary damages as compensation for being improperly subjected to the jurisdiction of the bankruptcy courts in the first instance. But the district court in this case did just that to Hamilton

Taft. And the Ninth Circuit affirmed. Other involuntary debtors can and will meet the same fate if the lower courts' equitable mootness rationale prevails. That is why the Court should grant this petition.

B. The Debtor Has Standing

Respondents, in both the district court and the Ninth Circuit, raised the same lack of "standing" argument that they raise again in their opposition here. Respondents argued below that only the court-appointed Trustee for Hamilton Taft, and not the debtor itself, could decide whether to pursue an appellate remedy from the bankruptcy court's orders. The lower courts here both properly ignored this argument. Pet. App. 1a-15a.

The real party in interest in an appeal challenging the appropriateness of bankruptcy court orders directed against an involuntary debtor is the debtor itself, not a court-appointed trustee. *See In re Nucor, Inc.*, 118 B.R. 788, 790-91 (D. Colo. 1990). This is particularly true where, as here, the challenged orders include the order for relief and the order appointing the trustee.

In *In re Nucor*, the court-appointed bankruptcy trustee moved to dismiss the involuntary debtor's appeal from the order for relief on the ground that the trustee was the only party with standing to pursue such an appeal. The district court denied the motion, pointing out:

> This is an appeal by Nucor, Inc. of the order which originally put the company into bankruptcy. Nucor, Inc. is the appellant and the real party in interest. It is not an appeal by the subsequently-created bankruptcy estate, which is administered by the trustee. Consequently, the party with authority to dismiss the appeal is Nucor, Inc., not the trustee.

118 B.R. at 790-91.

Like the debtor in *Nucor*, Hamilton Taft has standing to appeal the bankruptcy court and district court orders in its own name. The Trustee may not prohibit those appeals, even though he has obtained possession of the debtor's stock, because the corporation, as the real party in interest, has the right to prove that

the proceedings by which the trustee was able to obtain such control were improperly filed in the first instance. It defies reason and equity to say that the Trustee can shield himself from appellate review of bankruptcy court rulings on which the validity of his own appointment and power depends by simply refusing to consent to the appeal.

C. The Debtor's Effective Remedy Is Its Statutorily Authorized Right to Seek Damages from the Parties Who Filed the Involuntary Petition

Finally, Respondents beg the very issue presented when they argue that the debtor has no effective remedy because the trustee has effectively destroyed Hamilton Taft. The relevant remedy at issue in this petition is Hamilton Taft's right to recover statutorily authorized monetary damages under 11 U.S.C. section 303(i). Such a remedy may or may not restore Hamilton Taft to something like the condition it was in before petitioners filed their involuntary petition and the trustee got his hands on the company. Indeed, it will be true in many cases where an involuntary petition has been filed improperly that the debtor's prospects for recovery are tenuous. *See, e.g., In re R. Eric Peterson Constr. Co.*, 951 F.2d 1175, 1177 (10th Cir. 1991) (involuntary petition had "disastrous effect on [debtor's] financial health"); *Paradise Hotel Corp. v. Bank of Nova Scotia*, 842 F.2d 47, 48 (3d Cir. 1988) (involuntary petition undermined debtor's relations with its creditors, forcing debtor to file its own Chapter 11 petition). Nevertheless, understandably, Congress did not declare that section 303(i) is inapplicable where the harm has been most egregious.

If the debtor can establish on appeal that the petition was improperly filed, and the bankruptcy court orders are reversed, the debtor at least regains control of its own operations and has the right to direct its own future free of the trustee, even if that merely means taking control of its own bankruptcy estate. This is a right that Hamilton Taft, and other involuntary debtors in similar circumstances, will never have a chance to exercise if appellate review of bankruptcy court orders of the sort involved here can forever be foreclosed by the application of an equitable mootness doctrine.

Moreover, as is explained in the petition (and is unrebutted in the opposition), allowing meaningful appellate rights under such

circumstances would discourage those who might otherwise use the threat of involuntary bankruptcy proceedings as an improper means to coerce payment of disputed debts, or to satisfy other ulterior motives. *See, e.g.*, *In re Reid*, 854 F.2d 156, 159 (7th Cir. 1988) (11 U.S.C. § 303(i) was enacted "in recognition of the serious harm inflicted upon alleged debtors when involuntary petitions are wrongfully filed"); *In re Salmon*, 128 B.R. at 316 ("A bad faith filing goes not only to Salmon's filing of the involuntary petition, but also goes to the utilization of the entire bankruptcy system."); *In re SBA Factors of Miami, Inc.*, 13 B.R. 99, 101 (Bankr. S.D. Fla. 1981) (finding it "obvious that the use of the bankruptcy court as a routine collection device would quickly paralyze this court").

CONCLUSION

For these reasons, as well as for the reasons in the petition itself, the petition should be granted.

Respectfully submitted,

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